

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

In re: PHARMACEUTICAL INDUSTRY	)	
AVERAGE WHOLESALE PRICE	)	
LITIGATION	)	
<hr/>	)	MDL No. 1456
	)	
THIS DOCUMENT RELATES TO:	)	Civil Action No. 01-12257-PBS
	)	Subcategory No. 01-11337-PBS
<i>United States of America ex rel. Ven-a-Care of</i>	)	
<i>the Florida Keys, Inc. v. Dey, Inc., et al., Civil</i>	)	
Action No. 05-11084-PBS; and	)	Hon. Patti B. Saris
	)	
<i>United States of America ex rel. Ven-a-Care of</i>	)	
<i>the Florida Keys, Inc. v. Boehringer</i>	)	
<i>Ingelheim Corp., et al., Civil Action No.</i>	)	
07-10248-PBS	)	

**UNITED STATES' EXPEDITED MOTION TO STRIKE THE DEY DEFENDANTS'  
EXHIBIT AND WITNESS LISTS FOR FAILURE TO COMPLY WITH  
RULE 26 (a)(3)(A) OF THE FEDERAL RULES OF CIVIL PROCEDURE**

The United States hereby moves to strike the exhibit and witness lists filed by the Dey defendants on March 16, 2010, as well as the designations of deposition testimony served on the same date. As set forth more fully in the accompanying Memorandum, it is clear that Dey has failed to comply with Rule 26's directive regarding pretrial disclosures by narrowing the evidence and witnesses it intends to use at trial. Dey listed over 7,400 exhibits, characterized all but two of its 65 live witnesses as "may call," and designated more than 12,000 deposition citations from testimony of an additional 132 witnesses.

WHEREFORE the United States requests that the Court grant this Motion and strike the lists, ordering Dey to comply with Rule 26, and to cull its "may call" witness list. The Court also should amend the pretrial schedule to provide that the United States has fifteen days after Dey serves new compliant lists to respond. With respect to the exhibit list, the Court may wish to

simply limit Dey to the 254 exhibits Dey listed as ones it expects to use at trial, and strike the remainder of its list.

Respectfully submitted,

TONY WEST  
ASSISTANT ATTORNEY GENERAL

CARMEN M. ORTIZ  
UNITED STATES ATTORNEY

/s/ Laurie A. Oberembt

Joyce R. Branda  
Daniel R. Anderson  
Laurie A. Oberembt  
Civil Division  
Commercial Litigation Branch  
P. O. Box 261  
Ben Franklin Station  
Washington, D.C. 20044  
(202) 514-3345

By: /s/ George B. Henderson, II

George B. Henderson, II  
Barbara Healy Smith  
James J. Fauci  
Assistant U.S. Attorneys  
United States Courthouse  
1 Courthouse Way, Suite 9200  
Boston, MA 02210  
(617) 748-3272

FOR THE RELATOR,

James J. Breen  
The Breen Law Firm, P.A.  
5755 Northpoint Parkway, Suite 260  
Alpharetta, GA 30022  
Tel. (770) 740-000  
fax: (954) 499-1173

Gary Azorsky  
Susan Schneider Thomas  
Roslyn G. Pollack  
Berger & Montague, P.C.  
1622 Locust St.  
Philadelphia, PA 19103  
(215) 875-3090

#### CERTIFICATION

The undersigned certifies pursuant to LR 7.1(A)(2) that counsel have conferred concerning the above motion.

/s/ George B. Henderson, II  
George B. Henderson, II

#### CERTIFICATE OF SERVICE

I hereby certify that I have this day caused an electronic copy of the above document to be served on all counsel of record via electronic service pursuant to Paragraph 11 of Case Management Order No. 2 by sending a copy to LexisNexis File & Serve for posting and notification to all parties.

/s/ George B. Henderson, II  
George B. Henderson, II  
Assistant U.S. Attorney

Dated: March 23, 2010